IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11731 of 2004
With
SPECIAL CIVIL APPLICATION No. 14468 of 2004
With
SPECIAL CIVIL APPLICATION No. 2900 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG
HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHARAT SANCHAR NIGAM LTD THRO CHIEF GENERAL MANAGER & 2 - Petitioner(s)
Versus
M.C.VERMA - Respondent(s)

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Appearance :
MS PAURAMI B SHETH for Petitioner(s) : 1 - 3.
MR MS TRIVEDI for Respondent(s) : 1,
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CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 29/03/2006

COMMON ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

1. This judgment shall dispose of Special Civil Application No. 11731 of 2004 and Special Civil Application No. 14468 of 2004 filed by the petitioner – Bharat Sanchar Nigam Limited against Shri M.C. Verma and Shri K.K.Chaturvedi respectively and Special Civil Application No. 2900 of 2004 filed by Shri K.K. Chaturvedi, seeking further relief that he would be entitled to all his retirement benefits in view of the salary to which he would have been entitled in light of the circular dated 27.10.1997, circular dated 9.2.98 and clarification dated 26.4.2001 (at page nos. 37,40 and 41 respectively of the docket).

2. Respondent Shri M.C. Verma had joined the services with the present petitioner prior to 24.9.84. He was promoted to STS Grade on 24.9.84 and was thereafter promoted as Junior Administrative Grade [JAG] with effect from 9.8.86. It is to be noted that the STS Group and JAG are Grade “A” services. Shri K.K. Chaturvedi was also promoted to STS. Each of them filed Original Applications before the Central Administrative Tribunal. The case of Shri M.C. Verma was registered as O.A. No. 454 of 2001, while case of Shri K.K.

Chaturvedi was registered as O.A. No. 133 of 2000.

3. On 27.10.1997, Government of India, Ministry of Communication, Department of Telecommunication issued Circular No. 1.1/97-PAT, observing that the Ministry of Finance has clarified that the upgraded scale will be admissible to such of those Superintending Engineers and those holding analogous and equivalent posts in all Gr.“A” Engineering Services, who have completed, in all, total service of 13 years in Gr.”A”. The circular further said that the upgraded scale of Rs.14300-400-18300 would be given to all officers holding Junior Administrative Grade level posts belonging to Gr.“A” Engineering Services of the Department of Telecommunication, who have completed in all a total service of 13 years in Gr. “A” with effect from 1.1.96. The circular further directed that pay fixation etc. of such officers may be done accordingly. From this circular dated 27th October, 1997, it would be clear that the benefit was to be extended to all such persons who had completed service of 13 years in JAG level post on or before 1.1.96. It appears that the said department issued yet another Circular No.1-1(18)/97-PAT, dated 9.2.98. The circular said that to the

officers who will be completing 13 years of service after 1.1.96, revised pay-scale should be given from the date of completion of 13 years of service in Gr.“A” under fundamental rule 22(1)(A)(2). It was also observed in the circular that the length of service in Gr. “A” may be counted as per DOP&T O.M. No.19/1/86-PP, dated 13.8.87, according to which, an officer will be eligible for grant of scale of Rs. 14300-400-18300 when he enters the 14 years of service on the 1st July of the year calculated from the year, following the year of examination on the basis of which the officer was recruited.

4. It appears that juxtaposed reading of these two circulars created certain confusion, therefore, certain clarifications were sought. On 26.4.2001, Ministry of Communication, Department of Telecommunication issued a clarification regarding revised pay-scales of Superintending Engineers in P & T Civil, Electrical and Architectural wing and JAG officers belonging to Gr.”A” Engineering Services. The said clarification dated 26.4.2001 reads as under:-

Sr. No.	Clarification sought by the Deptt.	Clarification given by the MoF
1.	Whether the upgraded pay scale of Rs. 14300-400-18300 is applicable to Direct Recruitment Gr.A Officers and promotee officers as well.	The upgraded pay scale of Rs. 14300-18300 is applicable to all the S.Es. whether DR or promotee who were holding the post as on 1.1.96 and had put in 13 years of Gr.A service on that date. However, in case of promotees, the condition of 13 years of regular Gr.”A” service would be relevant, if they also like DRs. enter Gr.A through I.Ts. If they enter through STS directly, then only 9 years of Gr.A service will be required.
2.	Whether officiating periods in the Gr. A post shall be taken into account for computing 13 years of Group A.	As already clarified, only regular service in Gr.A post shall be taken into account for computing of 13 years of Gr.A service.
3.	The upgraded pay scale of Rs.14300-400-18300 is admissible to the retired Group A officers.	The upgraded scale of Rs.14300-18300 shall not be admissible to those Group A officers who retired before 6th June, 2000.

Sr. No.	Clarification sought by the Deptt.	Clarification given by the MoF
4.	Admissibility of one increment for every three increments (including stagnation increments) in the revised scale of pay Rs.14300-18300 to those who were not in the selection grade of JAG Gr.A but in the scale of pay Rs.3700-5000.	As per the CCS (RP) rules 1997 the benefit of one increment in the revised scale of pay for every three increments in the applicable pre-revised scale of pay is to be allowed in all the cases.
5.	Whether the benefit of one increment in the revised scale has to be allowed for every three increments in the pre-revised scale of pay on earned increments in the scale or on the increments corresponding to the stage irrespective of the fact whether the increment has been earned in the scale or not.	For the purpose of pay fixation the number of increments which correspond to a particular stage in the pay scale are to be taken into consideration for allowing the benefit of one increment in the revised pay scale for every three increments in the pre-revised pay scale and the number of increments actually earned in the scale.

5. The clarification no.3 was relating to the cut off date and it said that the upgraded scale of Rs.14300-18300 shall not be admissible to those Gr.A officers who

retired on or before 6th June, 2000.

6. It appears that Shri K.K. Chaturvedi's case was rejected because of the clarification no.3, therefore, he came to this Court in Special Civil Application No. 6957 of 2001, which was decided on 17.2.2003. This Court made the following observations in paras 4 and 5 of the said judgment:-

> " It is true that as per the communication dated 9.2.1998, at Annexure-A, the revised pay scale of Rs.14300-400-18300 was given to all the JAG officers belonging to Group-A Engineering Service in the Department of Telecom who have completed in all a total service of 13 years in Group-A with effect from 1.1.1996 irrespective of their designation in JAG. However, the said benefit was provisionally fixed up till further orders and the said pay fixation is subject to revision depending on the clarification sought for from the DOP & T regarding computation of 13 years, requirement of DPC etc., which is clarified by above communication. We, however, fail to understand as to how the DOP & T has clarified and on what basis and how the upgraded scale of Rs. 14300-18300 is not admissible to those Group-A officers who retired before 6th June, 2000. These are the possible questions crop up while deciding the case on hand. In absence of any material or any justifiable reasons from DPO&T, it

is no possible for us to straightway accept the clarification given in the matter. The Tribunal, in our opinion, could have insisted for appropriate clarification from the DOP&T before accepting the communication dated 26.4.2001. We are, therefore, of the opinion that this matter requires re-consideration and a fresh decision is inevitable."

In the result, this petition is allowed. The order dated 16.7.2001 passed by the Central Administrative Tribunal, Ahmedabad Bench in O.A. No.133 of 2000 is quashed and set aside. The matter is remanded back to the Tribunal for the purpose of deciding the matter afresh. It will be open for the petitioner to seek appropriate relief by challenging the Circular dated 26.4.2001 by impleading the concerned Department as party respondent. Rule is made absolute accordingly. There shall be no order as to costs."

7. After the matter was remanded to the Tribunal, the cases of Shri K.K. Chaturvedi and Shri M.C. Verma were heard together. The Tribunal observed that clarification no.3 was creating a class into a class, which was violating the principle of equality and was ultra vires and as such, it was required to be quashed. It accordingly quashed the said clarification. It further observed that each of the petitioner before it would be entitled to the Grade of Rs.14300-18300 since after

completion of 13 years. While disposing of the matter, the matter of Shri K.K. Chaturvedi relating to his retiral benefits etc. was not disposed of in favour of the said petitioner, therefore, he has also filed Special Civil Application No. 2900 of 2004.

8. Ms. Pauromi B. Sheth, learned counsel for the department submits that the first circular of 27th October, 1997 did not confer any rights in favour of the person who had completed 13 years much after 1.1.96 and as such, the petitioner's case would be covered under the circular dated 9.2.98 and the clarification dated 26.4.2001. According to her, petitioner Shri M.C. Verma, though had completed 13 years of Gr.A service on 24.9.97, but as his case could not be considered before the next July, he would not be entitled to the additional grade. For Shri K.K.Chaturvedi, it is submitted that his case would not fall in the category in view of clarification no.3 as he had retired prior to 6th June, 2000. It is also submitted that the observations made in the case of Shri K.K.Chaturvedi would not help and assist the case of Shri M.C. Verma even if the department has not provided any reasons for fixing the cut off date as 6th June, 2000.

9. Mr. M.S. Trivedi, learned counsel for the respondent and for Shri K.K. Chaturvedi, however, submitted that the objections raised by the department are per se, misconceived and they deserve to be rejected outright. According to him, the right accrued in favour of each of the petitioner on completion of 13 years of service and the consideration thereof is deferred for some time, that would not adversely affect the rights of the incumbent. It is also submitted by him that if in case of Shri K.K. Chaturvedi, this Court had observed that the High Court failed to understand as to how DOP&T has clarified and on what basis, the upgraded scale was not made admissible to the officers retiring before 6th June, 2000 and on that count alone, the matter was remanded, then, the department was obliged to bring out a justifiable explanation giving a cause which persuaded it to fix the cut off date as 6th June, 2000. He further submitted that in these cases, each of the petitioner had completed 13 years' service in Gr.A services, therefore, on completion of such services, they would be entitled to the benefit of the Grade. Ms. Sheth, learned counsel for the petitioner, however, submitted that a person who is entitled to promotion on completion of qualifying

services if cannot be promoted because of non-availability of the vacancy, then the right to draw benefits from the promotional post would accrue in his favour from the date of the promotion and not from the date of completion of qualifying service. She submits that unless the entitlement is considered in July next on completion of 13 years, the incumbent would not be entitled to any benefit.

10. So far as last of the argument is concerned, we would take it first and would describe it as an argument of frustration. In a given case, when the vacancies are not available, a person entitled to be promoted cannot be promoted because of non-availability of the vacancy, but in a given case, where a vacancy is available and the person who is entitled to promotion is not promoted because of one reason or the other or because of pendency of some departmental inquiry, then, on clearing of departmental inquiry and in case of a clean chit in favour of such incumbent, the incumbent will have to be given all his promotional benefits attached to his promotional post from the date of his entitlement and not from the date of the conclusion of the inquiry.

11. In the present case, the right to get upgraded scale of Rs.14300-18300 accrued in favour of each of the petitioner on completion of 13 years of qualifying service. If for one or the other administrative reason, the department thought that cases of such persons are to be considered in July next, then, in the July next, the department only has to issue an order that such person would be entitled or not. In case, nothing adverse is found against such incumbent and he otherwise fulfills all the requirements, then, the department would be obliged to issue such order. In such a case, the entitlement would be from the date of completion of 13 years of qualifying service and not from the date when the department considers the case or issues an order. If the submission made by the learned counsel for the department is accepted, then, the department can frustrate the rights of all concerned by not considering their cases for long many years and in the meanwhile, allow everybody to retire. When the department is issuing a circular, then, it should be honest in interpreting the circular and should not become dishonest to its own stand. In the present case, undisputedly, the right to get upgraded scale accrued in favour of each of

the petitioner much before their retirement and if that is the correct position of fact, then, their cases were to be considered in July next for necessary orders. When cases are considered in July next, the entitlement would be from the date of completion of 13 years. In the present case, it would not be possible for us to hold that the right would flow in favour of an employee/incumbent only in July next and if before that a man retires, he would not be entitled to any benefits under the circulars.

12. So far as the clarification no.3 is concerned, we must immediately observe that if in the matter of Shri K.K. Chaturvedi, this Court had observed that the department was not coming out with a clarification, rather reasonable and justifiable clarification for fixing the cut off date and the Tribunal was obliged to inquire from the department, then, the department was obliged and duty-bound to give clarification for fixing the cut off date. Even otherwise, the clarification cannot withdraw the rights which have already accrued in favour of a person. The second circular does not fix 6th June, 2000 as cut off date nor does the circular say that the persons who had retired prior to 6th June, 2000 would

not be entitled to the benefit of the earlier circulars and if that be so, by clarification, substantive circular conferring rights upon the incumbent could not have been interfered with nor rights accruing in his favour could be withdrawn. A clarification clarifies what is in existence, it cannot add or delete to or from the original text nor can make nugatory the provisions in existence. If the department wanted to fix a cut off date, then, it was obliged to issue a fresh circular in place of issuing a clarification.

13. Examining from every angle, we are of the opinion that there is no merit in Special Civil Application No. 11731 of 2004 and Special Civil Application No. 14468 of 2001. Each of the petition is dismissed with costs quantified to Rs.5,000/- in each case. Rule is discharged in each of the petition. Interim relief earlier granted, if any, is vacated.

14. So far as Special Civil Application No. 2900 of 2004 is concerned, in light of the findings recorded by us, we must observe that the petitioner Shri K.K.Chaturvedi would be entitled to all the benefits of the upgraded scale on completion of 13 years' service and for the

purposes of retiral benefits and pension this would be taken into consideration by the department. The petition Special Civil Application No. 2900 of 2004 filed by Shri K.K.Chaturvedi is allowed to the extent indicated above. Rule is made absolute to the above extent.

(R.S. Garg, J.)

(Sharad D. Dave, J.)

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